

BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE
TRIBUNAL, MUMBAI

APPLICATION FOR CONDONATION OF DELAY
In

AT006000000011028

M/s Man Global Ltd.

.... Appellant

Versus

Mr. Ram Prakash Joukani

.... Respondent

Along With

APPLICATION FOR CONDONATION OF DELAY
In

AT006000000011032

M/s Man Global Ltd.

.... Appellant

Versus

Mr. Bharat Joukani

.... Respondent

Shri Makarand Raut, Advocate for Appellant
Shri. Nimay Dave a/w Ms. Viloma Shah i/b Hariani & Co.
Advocate for Respondents

Coram : S.S. Sandhu, Member (A)

Date: 02nd May, 2019

JUDGMENT (Per S.S. Sandhu, Member(A))

The Applicants seek condonation of delay of 62 days in filing the appeals that arise from the order dated 24th September, 2018 passed by the learned Member and Adjudicating Officer Maharashtra (for short 'the learned Member') in Complaint numbers

CC 0060000000044245 and CC 0060000000044246. In the said proceedings after hearing the parties, the learned Member passed the order directing thereby:

"The Respondents shall pay to each Complainant simple interest at the rate of 10.5% p.a. on Rs.5,14,00,000/- w.e.f. 1st July, 2016 till handing over the possession of flats with all agreed amenities. The Respondents shall refund Rs.61,73,878/- charged for connected/affiliated area (lift lobby) of 118 sq. ft. on the basis of pro rata rate.

The Respondents are entitled entitled to get the amount of refund adjusted towards the dues payable by the complainants and shall pay the balance, if any.

*The Respondents shall pay each complainant Rs.20,000/- towards the cost of their complaints.**

Being aggrieved by the aforesaid order, these Appeals have been filed with aforementioned delay which is sought to be condoned by the applicants in the instant proceedings

2. During the arguments, the learned Counsel for Applicants reiterated the grounds as stated in the Applications for seeking condonation of delay, supported by an additional Affidavit. He also filed his Written Submissions on 26th April, 2019 in support of his averments for condoning the delay. His submissions are as follows:

- i) He submitted that Applicants received the impugned order via email on 27th September, 2019. As per their instructions, the office representative filed the online appeals on 22nd November, 2018 within prescribed period of 60 days but

inadvertently and through oversight, uploaded the details of Appeals on the 'Project Profile' on the MahaRERA website, instead of uploading the same on online Appellate Portal. Exhibit '2' along with the additional Affidavit to show the factum Appeals uploaded on the project profile.

- ii) He further submitted that when they received no confirmation from the RERA Authority regarding the Appeals numbers, their officers came to know from their colleagues/Appellate Authority in the second week of December, 2018 that it was essential to submit the certified copy of the impugned order along with the Appeals. Accordingly, they applied for the certified copy of the impugned order on 18th December, 2018. The certified copy was received on 1st January, 2019. As stated in Para 5 of the additional Affidavit, when the Applicants visited the MahaRERA Authority for submitting the certified copy, they learnt to their shock that the Appeals have not been filed/uploaded as required under law. At the same time they came to know that the Appeals have been wrongly filed/uploaded on 'Project Profile' instead of 'Appellate Portal'. In these circumstances, the Applicants visited their advocate in the fourth week of January, 2019 (mentioned as second week in Para 6 of the additional Affidavit due to a typographical error) for advice on process of filing online Appeals following which the Appeals along with details were uploaded on the Appellate webpage on 27th January, 2019 with a delay of 62 days.



- iii) The Applicants also submitted that due to voluminous paper work involved in the appellate proceedings it took some time for preparing and supplying the hard copies of Appeals along

with the documents to the Respondents by 27th February, 2019 and to the office of the Tribunal on 6th March, 2019.

- iv) The Applicants submitted that this was one of their first proceedings and the Applicants and their officers were not conversant with the procedure of filing online Appeals. Therefore, the aforesaid delay is neither deliberate nor intentional but on account of oversight/bona fide mistake on the part of Applicants by uploading the Appeals on wrong portal.
- v) The Applicants relied upon the judgment of Hon'ble Supreme Court in the case of **Collector, Land Acquisition, Anantnag and Ors. Vs. Katiji and Ors. (Manu/SC/0460/1987)** and also the judgment of Hon'ble Bombay High Court (Aurangabad Bench) reported in **Manu/MH/0022/2000** to submit that a liberal approach for condoning the delay must be adopted by avoiding pedantic approach to explain every day's delay. According to them, the length of delay is not the matter, acceptability of explanation is the only criterion. In their support, they further pressed the judgment of Hon'ble Supreme Court in the case of **N. Balakrishnan Vs. M. Krishnamurthy (Manu/SC/0573/1998)** to submit that in every case of delay there can be some lapse but that alone is not sufficient to turn down the plea or explanation for the delay, if it does not smack of mala fides or it is not put forth as a dilatory strategy by the litigant concerned. By referring to the judgment of Hon'ble Supreme Court in the case of **Vedabai alias Vajjyanantabai Baburao Patil Vs. Shantaram Baburao Patil and Ors. (Manu/SC/0382/ 2001)** the Applicants submitted that the Court should adopt pragmatic approach while exercising the discretion under



Sec. 5 of the Limitation Act and a distinction must be made between the case where delay is inordinate and the case where delay is of a few days.

- vi) The Applicants also cited Para 21.6 of Hon'ble Supreme Court judgment in the case of **Esha Bhattacharjee Vs. Managing Committee of Ragnathpur Nafar Academy and Ors. (2013)12 SCC 649** to submit that it should be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the Courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

After detailed submissions as above, the learned Counsel for Applicants pleaded that in view of settled law as above, the Applications for condonation of delay be allowed and the Appeals be heard on merits as the Applicants have very good cases on merits.

3. Per contra, the learned Counsel for Respondents filed his Affidavit in reply to vehemently oppose condonation of delay on account of various contradictions and alleged falsities relating to the reasons assigned in online Appeals, the Applications for condonation of delay and additional Affidavit filed subsequently on 2nd April, 2019 by the Applicants. In his Affidavit in reply and during oral arguments, the learned Counsel argued that from various contradictions and discrepancies in the reasons submitted by the Applicants, it is evident that the Applicants have not only acted negligently but have also made false averments and concocted stories. These are summarised as under :

- i) In the online Appeals uploaded on the Appellate website, the delay is stated to be of 95 days which is contrary to the delay

of 62 days as mentioned in the Applications for condonation of delay and also in the additional Affidavit filed by the Applicants.

- ii) Though the date of uploading of Appeals through oversight on wrong portal is mentioned as 22nd November, 2018 in Para 2(b) of the Applications for condonation of delay, no such date is mentioned in Para 3 of the additional Affidavit and it is vaguely stated that the said Appeals were uploaded in the month of November, 2018. Also the Exhibit "2" submitted by the Applicants in proof of uploading the Appeals wrongly on profile page as alleged shows no date or other details to confirm this fact.
- iii) Contradictory and discrepant facts regarding reasons for delay are stated by Applicants in the following documents filed in these proceedings as shown below :-
 - (a) With regard to the requirement of filing of certified copy of the impugned order along with the Appeal, the Applicants stated in Para 2(c) of Applications for condonation that they learnt about that upon inquiry with the Appellate Authority, whereas in Para 4 of additional Affidavit it is stated that the officers of the Applicants came to know of this from their colleagues. However, in the Written Submission filed on the last day of hearing the Applicants have vaguely stated that they enquired about the Appeals Numbers in the department in the second week of December, 2018 and nothing specifically has been stated about inquiries made relating to certified copy or the 'department' with which such enquiries were made.



- (b) With regard to making efforts to contact their advocate, in the online Appeals Applicants have stated that on receiving no response from the Authority to the Appeals filed (22nd November, 2018) the Applicants contacted their Advocate in the fourth week of January, 2019 for filing Appeals, whereas, in Para 6 of additional Affidavit they stated to have visited the Advocate's office in second week of January, 2019 to be modified later as fourth week of January, 2019 in their Written Submissions. However, in their Applications for condonation of delay, it is simply stated that they instructed their Advocate to file the Appeals and accordingly, on 27th January, 2019 the Applicants uploaded the Appeals on Appellate website.
- iv) Though inadvertently, if the Appeals were already filed in the aforesaid manner on wrong portal on 22nd November, 2019 and the certified copy of the impugned order was also obtained on 1st January, 2019, there is no plausible and satisfactory reason for filing online Appeals 4 weeks after on 27th July, 2019 and for supplying the hard copies of the Appeals and other documents with an inordinate delay on 27th February, 2019 to the Respondents when supposedly all documents they were ready with them in first week of January only. This shows that Applicants have made false statements on affidavit and thus indulged in mala fide conduct.
- v) The learned Counsel for Respondents relied upon the judgment in the case of **Esha Bhattacharjee(supra)** and referred during the arguments for opposing and disallowing the condonation of delay as under :-



- 21.5 *Lack of bona fide imputable to a party seeking condonation of delay is a significant and relevant fact;*
- 21.7 *The concept of liberal approach has to encapsulate the conception of reasonableness and totally unfettered free play is not allowed;*
- 21.9 *The conduct, behavior and attitude of a party relating to its negligence cannot be given a total go-bye in the name of liberal approach;*
- 21.10 *If the explanation offered is concocted or the grounds urged in the Applications are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such litigation;*
- 21.11 *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by take recourse to the technicalities of the law of limitation;*
- 22.1 *An Applications for condonation of delay should be drafted with careful concern and not in a haphazard manner harboring the notion that the Courts are required to condone the delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system;*
- 22.4 *The increasing tendency to perceive the delay as a non-serious matter and hence lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, with legal Parameters."*



4. With the above averments made as above, the learned Counsel of Respondents submitted that conjoint reading and analysis of aforementioned facts/documents suffering from serious discrepancies and contradictions show that the grounds raised by the Applicants for justifying the delay are false, concocted, dilatory and not bona fide and genuine. There appears to be a deliberate ploy to delay the benefits to Respondents who made huge investments and have been waiting for possession of the flats since so many years. He accordingly sought outright rejection of the Applications for condoning the delay.
5. Having heard and considered the rival submissions advanced by both the parties and the documents on record, I now proceed to examine the admissibility of the sufficient cause as shown and put forth through the Applications seeking condonation of delay. In this regard, it is stated that Sec. 5 of the Limitation Act provides admitting an appeal or application after the prescribed period, if the appellant/applicant satisfies the Court that he has sufficient cause for not preferring the Appeal or making the Application within such period. The Hon'ble Supreme Court on number of occasions has opined and laid down distinct guidelines to be adhered to and applied by the respective forums while deciding the Applications for condonation of delay. Some of such guidelines/principles laid down in the judgment in the case of **Esha Bhattacharjee(supra)** and in other cases are recorded hereinabove as submitted by the parties in support of their averments.
6. Admittedly, Hon'ble Supreme Court has time and again held that the expression "sufficient cause" in Section 5 of the Limitation Act, 1963 should receive liberal construction to subserve the ends of justice. However, the Hon'ble Supreme Court has also held that the Courts must keep in mind, while dealing with the limitation



petition that there is a distinction between the delay for a plausible reason and delay because of inaction or negligence which deprives a party of the protection of the Limitation Act. As held by Hon'ble Supreme Court in Para14 of the judgment in the case of **Balwant Singh (Dead) Vs. Jagdish Singh & Ors. on 8th July, 2010**, *"the liberal construction of the expression "sufficient cause" is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the Applicants, to whom want of bonafide is imputable The party should show that besides acting bonafide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention"*.

Further, it is also relevant to note that Hon'ble Supreme Court in Para 8(i) of the judgment in the case of **Perumon Bhagvathy Devaswom Vs. Bhargavi Amma [(2008) 8 SCC 321]** has laid down as under :

"The words "sufficient cause" for not making the application within the period of limitation should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case and the type of case. The words "sufficient cause" in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bonafide, deliberate inaction or negligence on the part of the Appellant".



7. As may be noted from the above, firstly, the principles laid down by Hon'ble Supreme Court in various pronouncements enumerated hereinabove are to be applied depending upon the facts and circumstances of the case. Secondly, it needs to be examined whether besides acting bonafide, there was no negligence or inaction on the part of Applicants and they had taken all possible steps to avoid unnecessary delay. By applying aforesaid yardsticks to the factual matrix of the cases in hand it is observed thus :

- i) Firstly, the Applicants admittedly became aware of the impugned order passed on 24th September, 2018 immediately thereafter by receiving it on 27th September, 2018 by email. So, there was no belated knowledge of the impugned order to the Applicants. As per law the Applicants had 60 days to file the Appeals by complying all the formalities as prescribed. Expected to act diligently and seriously and with sufficient time available to them, the Applicants ought to have taken diligent steps such as studying the processes and procedures relating to filing the Appeals, procuring certified copies of impugned order, seeking legal advice, drafting the Appeals etc. However, it is seen that no such facts are submitted on the record by Applicants to prove their bona fides that they exercised due care and attention to file the appeals as per law till they supposedly uploaded the same on wrong portal on 22nd November, 2018 just to be within the limitation of 60 days. Further, if the Applicants are to be believed, their submissions clearly reveal that in fact till around 2nd week of December, 2018 they were not even aware of the basic requirements of filing of the Appeals such as obtaining the



certified copy of the impugned order, payment of fees as prescribed under the RERA and relevant rules/regulations framed thereunder. It means that Applicants did not make earnest efforts for taking necessary steps to file Appeals in time and acted in a casual, non-serious and negligent manner. Their negligence is clearly seen from their act of uploading the Appeals on a wrong portal.

- ii) Secondly, even though the Applicants claim to have filed the Appeals on a wrong portal on or around 22nd November, 2018, no cogent proof has been submitted to substantiate beyond doubt that they had actually filed the said Appeals, as claimed. Exhibit "2" submitted in evidence of their said plea, along with additional Affidavit neither reflects the details of contents of the said Appeals nor the date on which the Appeals were filed. During dictation of this judgment, the Applicants submitted a print out of an email dated 22nd November, 2018 addressed by them to one IT Global in an attempt to show filing of the Appeals on 22nd November, 2018. This document unsupported by any affidavit is found to be of no consequence as it neither reveals the contents of the Appeals nor proves that the said Appeals were ever uploaded on the wrong portal of the Authority as claimed. These facts pose a serious challenge to the veracity of claim of the Applicants on this count.



It is further observed that, even bare look at the Exhibit "2", which is a print out of format for furnishing the project details, would make it clear that it does not contain the relevant columns for filing the Appeals as required under Rule 9 of The Maharashtra Real Estate(Regulation and Development)(Recovery of Interest, Penalty, Compensation,

Fine Payable, Forms of Complaints and Appeal, etc.) Rules, 2017 (the Rules). One really wonders as to how any diligent Applicant could have uploaded the Appeals in such a format in the absence of relevant columns provided therefor.

In the given facts and circumstances as above, the plea of Applicants that they filed the said Appeals within limitation merits no consideration and credit.

- iii) Thirdly, it is also observed that as developers, being capable and having all resources to employ and deploy best possible legal resources, it is rather unbelievable and pathetic to see the Applicants casually depending on either the advice of some colleagues of their staff (as stated in the additional Affidavit) or on the information being sought from some vague sources in the Appellate Authority (as stated in Applications for condonation of delay) to tell them necessity of submitting certified copy of impugned order along with appeal and other formalities relating to file appeals. As a result, it is seen that even after coming to know in the second week of December, 2018 that they needed to file the certified copy of the impugned order, they took almost one and half month to reach their Advocate in the fourth week of January, 2019 (stated earlier as second week of January, 2019 in additional Affidavit claiming typographical error). Had they taken all possible steps within their power and control and acted diligently with due care and attention having received the impugned order well in time on 27th September, 2018, they could have definitely reached the Appellate Authority in time by avoiding the grave consequences of delay in filing the Appeals.



In short, the conduct and attitude of Applicants shows want of diligence and inaction on their part as they failed to do something required to be done by them for filing the Appeals in time. Therefore in my view explanations tendered by Applicants to show sufficient cause for delay in filing Appeals just do not hold water. Such an approach and conduct by Applicants cannot be approved and condoned for doing justice only to the Applicants. It has been opined by Hon'ble High Court in Para 13 of judgment in the case of **Balwant Singh (supra)**, that liberal construction of show cause cannot be equated with doing injustice to the other party. Therefore the justice oriented approach ought to be adopted in favour of Respondents also who had acquired the order in their favour and had been waiting for years together for possession of flat for which they had invested crores of rupees.



- iv) Fourthly, without repeating details of what is argued by the Respondents earlier on this issue, it is observed that several discrepancies and contradictions in the explanations tendered by Applicants in online Appeals, Applications for condonation of delay, additional Affidavit, Written Submissions etc. as brought out by learned Counsel of Respondents belie the truthfulness of these explanations. According to learned Counsel for Respondent, the said contradictions/discrepancies amount to presenting an afterthought concocted story by Applicants to justify the alleged delay which does not merit favourable consideration in terms of certain principles laid down by Hon'ble Supreme Court in the case of **Esha Bhattacharjee** as cited at Para 3(v) above with particular reference to Para 21.10 therein. It

is also pertinent to note that the contentions of Respondents on this count found no cogent and sufficient rebuttal from the Applicants. It is a settled law that it is not the length of delay but the acceptability of explanation that matters for condoning the delay. In the facts of these cases, the explanations replete with inconsistencies and discrepancies for showing cause of delay appear to have been advanced to camouflage the lack of bona fides, negligence and inaction on the part of Applicants. Ex-facie they lack bona fides and therefore they cannot be and should not be accepted.

8. Having regard to the totality of facts and circumstances of these cases as discussed and observed hereinabove, in my considered view the Applicants are found to be negligent, casual, non-serious and lackadaisical in their conduct, behavior and attitude and grounds advanced by them for seeking condonation of delay are not held to be satisfactory and acceptable. Therefore in view of the observations as above and in order not to do injustice to Respondents by delaying or derailing benefits acquired on the basis of impugned order, the Applications for condonation of delay deserve to be rejected and the same are rejected without any costs.
9. In view of the order as above, the learned Registrar to take further necessary action with regard to the respective Appeals.


(S.S. Sandhu)